



UNITED STATES DEPARTMENT OF EDUCATION

June 8, 2021

Ms. Robyn K. Bitner
National Student Legal Defense Network
1015 15th Street NW, Ste. 600
Washington, DC 20005

Re: Appeal – 19-00040-A (Appeal 19-00021-A; FOIA Request 19-00550-F)

Dear Ms. Bitner:

I am writing in response to your letter dated June 12, 2019, appealing the U.S. Department of Education's (Department's) May 28, 2019 response to your January 10, 2019 appeal regarding a December 18, 2018 request for records that you submitted on behalf of the National Student Legal Defense Network pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Background

Your FOIA request sought the following:

1. All Notices of Proposed Debarments issued or provided to any individual or entity relating to, or arising out of, that individual's or entity's participation or involvement in Title IV, HEA programs; and
2. All Notices of Proposed Suspensions issued or provided to any individual or entity relating to, or arising out of, that individual's or entity's participation or involvement in Title IV, HEA programs.

By letter dated January 9, 2019, the Department advised you that your request was forwarded to the Office of the Deputy Secretary (ODS) to search for documents responsive to you request, and that ODS was unable to locate any responsive documents. On January 10, 2019, you filed an appeal challenging the adequacy of search for responsive documents, and your request was remanded to ODS and Federal Student Aid (FSA) to conduct an additional search for documents responsive to your request. By letter dated May 28, 2019, FSA provided you with (242) pages of responsive records with portions withheld under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), to protect the names, personal addresses, and other identifying information concerning individuals who have/had been suspended or debarred from participating in Title IV, HEA transactions.

Your appeal, challenging the Department's application of Exemption 6 ensued.

Determination on Appeal

Based on a careful review of the correspondence between the parties, the information at issue in your appeal, and applicable legal precedent, I have decided to grant your appeal in part and deny it in part. The reasons for my decision are set forth below.

Discussion

Exemption 6

In your appeal, you argue that the Department should reproduce these records without any redactions applied. You state that, throughout the 242-page production, the Department has redacted all of the names, addresses, and specific reasons why an individual or entity has been suspended or debarred from further participation in Title IV programs. You argue that these individuals and entities have no substantial privacy interest in protecting their names and addresses because the information is already available on the System for Award Management (“SAM”), which is searchable by the public. You also argue that the reason why the vast majority of these individuals and entities have been suspended or debarred is due to a criminal conviction for fraud and that there is likewise no substantial personal privacy interest in this information, given that it is already part of the public record.

Exemption 6 protects personnel, medical and “similar” files where the disclosure of such records would constitute a clearly unwarranted invasion of personal privacy. The term “similar files” has been interpreted broadly to cover any disclosure of information that applies to a particular individual. *U.S. Dep’t of State v. Washington Post Co.* 456 U.S. 595, 602 (1982). Exemption 6 requires a two-step analysis: (1) the identification of privacy interests implicated in the records requested; and (2) where such a privacy interest is identified, the balancing of that interest against the public interest, if any, to be served by disclosure. *Albuquerque Publishing Co. v. Dep’t of Justice*, 726 F. Supp. 851, 855 (D.D.C. 1989).

After reviewing the records, I find that the Department erred in withholding certain information, such as the names of the individuals and other information that is publicly available, and I am providing you a copy of the records with additional portions being released.¹ However, with respect to individuals whose information is not publicly available on SAM, I find that those individuals have a substantial privacy interest in the information and have withheld their names, as well as other identifying information regarding those individuals. Additionally, to the extent that any of the records contain information that would reveal individual’s street address, which is not available on SAM, and the signatures of the Notice Debarment and Suspension Officials, I find that the individuals have a substantial privacy interest in the information.

In situations where some risk of disclosure of personal privacy exists if the record is fully disclosed, it is necessary to further examine whether a relevant public interest is involved in the disclosure to determine whether the public interest outweighs the privacy interest. The requester bears the burden of establishing that disclosure would serve the public interest. *See Larson v. Central Intelligence Agency*, 843 F.2d 1481,

¹ Pages 19-21, 97-99, 126-28, 165-67, 174-76, and 198-200 pertain to notices regarding to individuals whose information does not appear on SAM.

Robyn K. Bitner

Appeal No. 19-00040-A (Appeal No. 19-00021-A; FOIA Request 19-00550-F)

Page 3

1483 (D.C. Cir. 1988). For purposes of this analysis, the public interest to be considered in the analysis is limited to FOIA's core purpose of shedding light on the activities of a government agency in the performance of its statutory duties. *See Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 773 (1989). I find that the individuals' privacy interests in this information outweighs any public interest in its release.

For these reasons, I am granting your appeal in part and denying it in part.

Notice of Further Rights

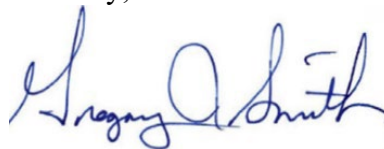
You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

Mail	FOIA Public Liaison Office of the Executive Secretariat U.S. Department of Education 400 Maryland Ave., SW, LBJ 7W104 Washington, DC 20202-4536	Office of Government Information Services National Archives and Records Administration 8601 Adelphi Road Room 2510 College Park, MD 20740-6001
E-mail	robert.wehausen@ed.gov	OGIS@nara.gov
Phone	202-205-0733	301-837-1996; toll free at 1-877-684-6448
Fax	202-401-0920	301-837-0348

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Gregory Smith
Director, FOIA Service Center
Signed on behalf of
Tracey St. Pierre
Chief FOIA Officer

Enclosure